

UNHCR Global Strategy

Beyond Detention 2014-2019

A global strategy to support Governments to end the detention of asylum-seekers and refugees



NATIONAL ACTION PLAN

Thailand

What is the UNHCR Global Strategy - Beyond Detention?

In June 2014, UNHCR launched its Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at: <http://www.unhcr.org/detention>

The process of developing the National Action Plan

UNHCR Thailand has for several years pursued a variety of approaches to introduce alternatives to detention to Thailand, as part of advocacy for an overall domestic legal protection framework for persons of concern to UNHCR, in coordination with other actors. UNHCR is also supporting the Royal Thai Government to improve detention conditions. UNHCR established in 2011 an inter-agency Task Force on Detention (DTF) comprising UNICEF, OHCHR, IOM, Jesuit Refugee Services (JRS), Catholic Office for Emergency Relief and Refugees/Bangkok Refugee Center (COERR/BRC), Thai Committee for Refugees (TCR), Asylum Access Thailand (AAT), UNHCR and, as observers, the Asia-Pacific Refugee Rights Network and the ICRC. The DTF meets regularly to design and review individual organisation and coordinated/complementary actions and will be an important forum for the roll-out of the NAP. As part of the NAP, in October 2014, UNHCR presented to the RTG an informal discussion paper entitled, 'A Framework for Alternatives to Detention,' highlighting existing provisions in Thai law which permit non-detention, including non-detention of children. An internal round-table discussion on alternatives to detention followed in November 2014 with key Government agencies on the occasion of the visit of UNHCR's Assistant High Commissioner (Protection). In June 2015, in furtherance of the NAP, UNHCR also presented to the Government a "Paper for Discussion" outlining a possible overall legal framework based on existing Thai law and international responsibilities. The NAP was drafted based on the practical issues and priorities identified through the above coordination and consultation mechanisms with civil society and the Government, in addition to other formal and informal discussions with all stakeholders.

Goal 1. End the detention of children

Thailand is a party to the 1989 United Nations Convention on the Rights of the Child (CRC), the protections of which are largely domesticated in the Child Protection Act of 2003 (CPA). In close consultation with key national agencies, UNHCR will advocate with the Government to apply the existing legal provisions, including Articles 19 and 54 of the Immigration Act, Articles 73 and 74 of the Penal Code, Article 22 of the CPA and Article 37 of the Anti-Trafficking in Person Act (ATPA), in as favorable a manner as possible for the benefit of asylum-seekers and refugees, in particular children. UNHCR, in partnership with civil society, will also continue to assist the Government to identify alternative non-governmental care facilities so that children and their parent(s) can be released to non-detention environments, provided policy/political will exists. Following the roundtable with Thai authorities in November 2014 and the Second Global Roundtable on Alternatives to Detention in Toronto in 2015, in which the Royal Thai Government participated, UNHCR will further cooperate with the Government in seeking "study tour" opportunities to learn from good practices in countries in the region. In complementarity with UNHCR Thailand's efforts, national and international NGOs will continue to engage in dialogue with the Government and undertake public campaigns.

Goal 2. Ensure that alternatives to detention are available in law and implemented in practice

As a follow-up to the more general "Framework for Alternatives to Detention" and as a prelude to the later "Paper for Discussion", in February 2015 UNHCR submitted a further informal discussion paper to the Royal Thai Government entitled "A Framework for Temporary Protection of Rohingya Persons of Concern Consistent with Existing Thai Law, Policy and Practice" examining, inter alia, possibilities for non-detention of Rohingya persons of concern including children. UNHCR will cooperate with the Government to seek implementation of these

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“frameworks”, in whole or in part. Briefing sessions have been and will further be organized for the police/immigration and other officials in order to examine and enhance understanding of the benefits, including national security benefits, of having a protective legal and/or policy framework. As one concrete measure, UNHCR will seek recognition of UNHCR documentation by the Thai authorities, coupled with mechanisms for non-arrest or non-detention of UNHCR document holders together with regular reporting requirement. UNHCR and other stakeholders likewise will continue to advocate for sympathetic application of existing procedures to, for example, ensure that “bail” payments are not required for children 14 and under for whom there is no criminal liability in Thai law. This can ease the burden on families seeking the “bail” option and maximize release from detention, while limiting burdens on the Thai budget and immigration staff.

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

UNHCR will continue its support to the Royal Thai Government to improve detention conditions to meet domestic and international standards. As part of efforts to implement Goal 3, UNHCR will seek to set up a monitoring program and will continue to provide material assistance (e.g., medications, hygiene kits, child friendly materials etc.) to refugees/asylum-seekers in places of detention in cooperation and coordination with concerned stakeholders, including DTF member organizations and the Immigration Detention Centre Coordination Committee (IDCCC). UNHCR is ready to provide detention condition monitoring tools to the Government and other stakeholders and to undertake briefing/trainings upon request. For individual case management in detention, UNHCR will continue to assist the authorities in their efforts to identify vulnerable cases for their further necessary action (e.g., provision of required medications and/or medical treatments, physiotherapy for persons with disabilities, counselling for victims of trauma). Specific interventions will support the Government in fulfilment of their custodial obligations towards detained children. UNHCR will also continue to conduct Best Interest Assessment/Determination jointly with the Ministry of Social Development and Human Security (MSDHS) and other interested stakeholders including COERR, JRS and UNICEF.

Detention overview

In Thailand, generally refugees/asylum-seekers are regarded as ‘illegal aliens’ under the Immigration Act if they do not otherwise possess valid immigration visas (e.g., tourist, business), although for Myanmar refugees there is an extant Cabinet Order permitting stay under some circumstances. The general ‘illegal status’ is rooted in the absence of a comprehensive national asylum system or domestic legal framework or policy on refugee protection. Thailand has not acceded to the 1951 Refugee Convention, but has acceded to the UN Convention against Torture, the CRC and the International Covenant on Civil and Political Rights. Thailand also has well-developed child protection and anti-trafficking laws. The principle of *non-refoulement* enshrined in the CAT and the best interests of the child in the CRC/CPA do not, however, specifically prevent detention. The Anti-Trafficking in Person Act provides, for example, for temporary stay for victims of trafficking, which can be applicable to refugees/asylum-seekers. In practice, however, access to this protection has been a challenge. Enhanced regularisation of illegal migrant workers from Myanmar, Laos and Cambodia, soon also to include Vietnam, have allowed some refugees/asylum-seekers from these countries to benefit from these procedures. Release from detention pending an overall ‘solution’ is interpreted as mandating provision of cash ‘bail’, the availability of which is discretionary and revocable, as well as beyond the ability to pay for many persons of concern to UNHCR.

Good practices and alternatives to detention

Among the positive practices in Thailand, regular UNHCR and NGO access to detention facilities stands out. In Bangkok Immigration Detention Centre, UNHCR has a small office and one full time Protection staff. Refugee Status Determination, Resettlement and other interviews are able to take place on a regular basis. UNHCR and IDC Bangkok staff also meet on a regular basis to discuss issues of common concern. UNHCR is regularly given permission to distribute material assistance to detainees to help improve conditions of stay. NGOs and other international organizations also normally have access to IDC Bangkok and IOM operates a small “day-care” facility at IDC Bangkok. On a monthly basis, children under 15 are also taken by IDC staff to local parks, etc. The availability of release on ‘bail’ is improving, albeit still entirely discretionary and revocable. UNHCR staff (normally upon written request) also have good access to IDCs and MSDHS ‘shelters’ outside of Bangkok. As part of a currently informal ‘temporary protection’ regime for Rohingya persons of concern, women and girls, as well as boys under 15, are (although technically ‘detained’) permitted to reside in semi-open MSDHS ‘shelters’; as opposed to IDCs, where they have access to a wider range of services and support. There has also been an increasing application of the ATPA to Rohingya individuals. While ‘shelter’ conditions vary, the scale is small and family contact/separation remains a serious concern, MSDHS shelters do provide a meaningful alternative to detention for some.

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